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CHARLES ELMORE CROPLEY

Supreme Court of the United States

October Term, 1941.

No. 951

STANDARD OIL COMPANY OF NEW JERSEY,

Petitioner,

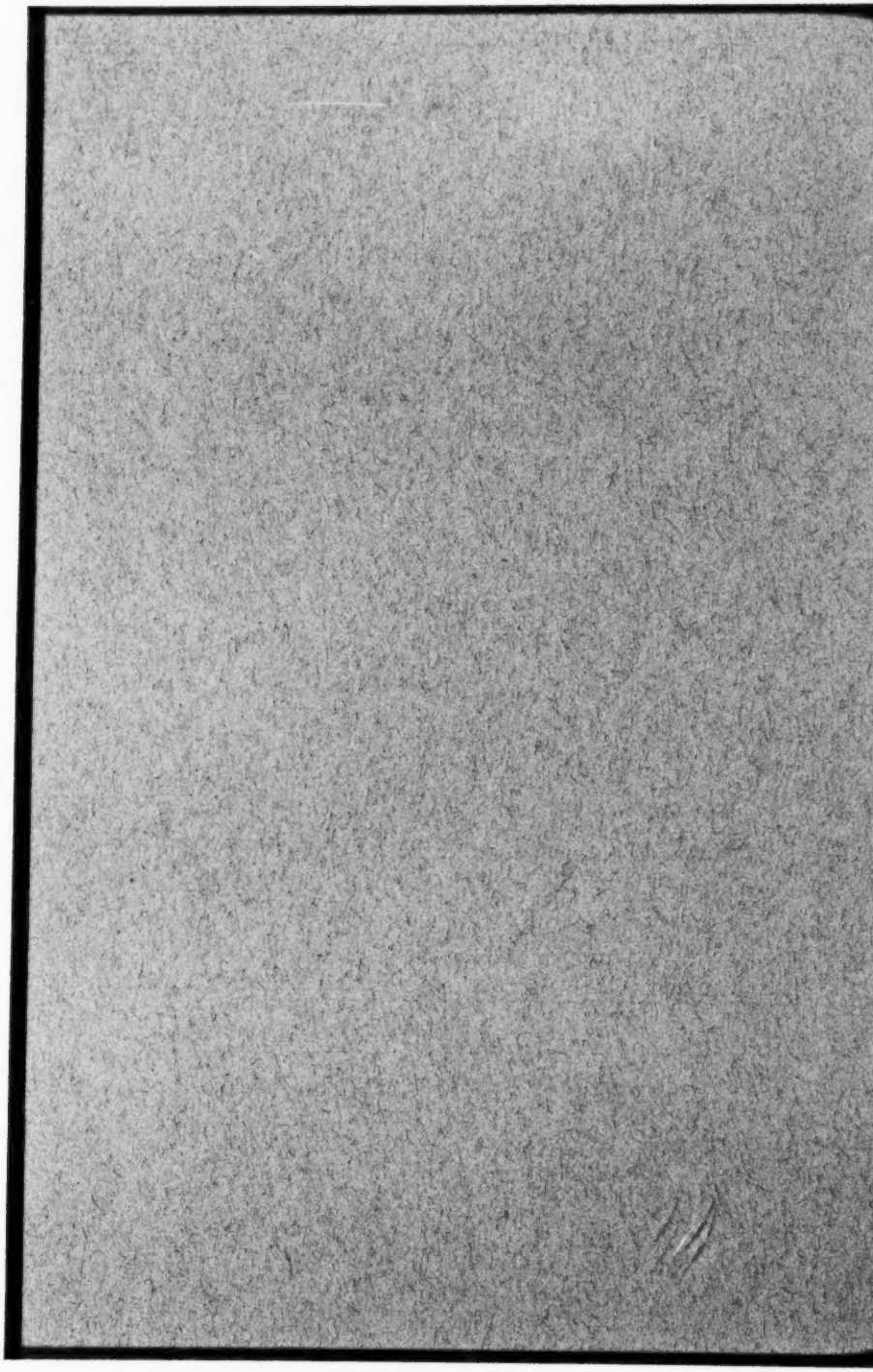
against

OLAF JOBGENSEN, JAMES J. [illegible], TAXPAYERS [illegible]

and OTHERS SIMILARLY [illegible]

PETITION FOR A WRIT OF [illegible]

WALTER [illegible]



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Supreme Court of the United States

OCTOBER TERM, 1941.

STANDARD OIL COMPANY OF NEW JERSEY, Petitioner, *against* OLAF JORGENSEN, JAMES J. SHEA, VASCO CANTOS and GUNNAR HANSON, Respondents.	No. .....

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Standard Oil Company of New Jersey, prays that a writ of certiorari issue to the Municipal Court of the City of New York, Borough of Manhattan, First District, to review a final order of the Supreme Court of the State of New York, Appellate Division, First Department, entered October 10, 1941 (R. 99), affirming an order and determination of the Appellate Term of the Supreme Court entered December 18, 1940 (R. 91) which affirmed a judgment of the Municipal Court of the City of New York, Borough of Manhattan, First District, entered on May 3rd, 1940 in favor of respondents (R. 6). Remittitur of the Appellate Division was filed in the Municipal Court (R. 97). Leave to appeal to the Court of Appeals was denied by order of the Supreme Court of the State of New York, Appellate Division, First Department, entered November

14, 1941 (R. 98). The three months' period within which to file this petition commenced to run on this latter date. *American Railway Express Company* v. *Levee,* 263 U. S. 19.

JURISDICTION.

The jurisdiction of this court is provided by Title 28, U. S. Code, Section 344, subdivision (b).

The order of the Supreme Court of the State of New York, Appellate Division, First Department, affirming the order of the Appellate Term which affirmed the judgment of the Municipal Court of the City of New York, is a final order by the highest court of the State of New York in which a decision could be had in this case.

Because this suit originated in the Municipal Court of the City of New York, the right of appeal from the said Appellate Division to the Court of Appeals, which is the highest court of the state, is governed by the Civil Practice Act of the State of New York, Section 589 (1). This statute provides that there may be no appeal to the Court of Appeals of the State of New York in cases originating in any court other than the Supreme Court, County Court, Surrogate's Court and the Court of Claims, unless the Appellate Division of the Supreme Court of the State of New York allows an appeal by order on application and shall certify that in its opinion there are questions of law which the Court of Appeals ought to review.

There is no right to make application to the Court of Appeals for leave to appeal thereto. *Dored* v. *Wells,* 282 N. Y. 590; *Franklin Simon & Company* v. *Pease & Elliman, Inc.,* 262 N. Y. 693.

Application for leave to appeal to the Court of Appeals was duly made to the Appellate Division and denied. Hence petitioner has exhausted its remedies by appeal in the courts of the State of New York.

Statement of Facts.

The four respondents became members of the crew of the Steamship *W. C. Teagle* on October 17th, 1939 when they signed shipping articles at New York before a deputy United States Shipping Commissioner (R. 10, 33, 34, 35 and Defendant's Exhibit No. A).

The articles are a printed form, required by statute and prepared by the Department of Commerce, Bureau of Marine Inspection and Navigation, Shipping Service (Form 705-A, June 1939).

The pertinent part of the shipping articles reads as follows (R. 48, 86, Defendant's Exhibit A):

> "It is agreed between the Master and seamen or mariners of the S.S. *W. C. Teagle,* Wilmington, Delaware, of which F. Marcus is at present Master, or whoever shall go for Master, now bound from the port of New York, New York, to Cartagena, Columbia, Montreal, Canada, and such other ports and places in any part of the world as the master may direct and back to a final port of discharge in the United States for a term not exceeding twelve calendar months".

Before the expiration of one month the vessel arrived at Montreal, discharged her cargo, and with the permission of the United States Maritime Commission, she was sold to Panama Transport Company, a Panamanian Corporation (R. 36, 37, 68). The sale of the vessel took place on November 13, 1939 at Montreal where she was delivered to her new owners, her United States registry was changed to registry under the laws of Panama and the American flag was replaced with the flag of the Republic of Panama (R. 36, 68).

STATUTES INVOLVED.

Because the ship was sold at a foreign port, petitioner acted under Section 4582 of the Revised Statutes (46 U. S. C. 684) and did everything required by that section. Section 4582 reads as follows:

> "*Wages on discharge in case of sale.* Whenever a vessel of the United States is sold in a foreign country and her company discharged, it shall be the duty of the master to produce to the consular officer a certified list of the ship's company, and also the shipping articles, and besides paying to each seaman or apprentice the wages due him, he shall either provide him with adequate employment on board some other vessel bound to the port at which he was originally shipped, or to such other port as may be agreed upon by him, or furnish the means of sending him to such port, or provide him with a passage home, or deposit with the consular officer such a sum of money as is by the officer deemed sufficient to defray the expenses of his maintenance and passage home; and the consular officer shall indorse upon the agreement with the crew of the ship which the seaman or apprentice is leaving the particulars of any payment, provision, or deposit made under this section. A failure to comply with the provisions of this section shall render the owner liable to a fine of not exceeding $50 (R. S. §4582; June 26, 1884, c. 121, §5, 23 Stat. 54; Dec. 21, 1898, c. 28, §7, 30 Stat. 759).

Upon the sale of the vessel at Montreal the Master, officers and other members of the crew, including the respondents, were transported by rail with their personal effects to New York City where they had previously joined the vessel (R. 20, 21, 22, 23). The entire expense of their transportation, including Pullman accommodations and meals, was defrayed by petitioner (R. 21, 23). In addition

they received their wages in full to and including the day of their arrival in New York, November 14, 1939. Their wages were paid in the presence of a deputy United States Shipping Commissioner (R. 22, 23, 40-44). They had earned twenty-eight days' wages from October 17th, 1939 when they signed the articles to November 14, 1939 when they signed off, both dates inclusive.

In spite of the fact that petitioner fully complied with Section 4582, the respondents claim that each is entitled to one month's extra wages under Section 4527 of the Revised Statutes (46, U. S. Code §594) which is as follows:

> "*Right to wages in cases of improper discharge.* Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned".

Petitioner contends that Section 4582 of the Revised Statutes is the only statute applicable. Furthermore, it contends that it complied with all the terms of the articles by returning the respondents to the port at which they had been engaged, with wages and subsistence until their arrival at that port.

The first contention brings into question the proper construction and application of Section 4527 and Section 4582 of the Revised Statutes.

The second contention raises the question of the proper construction of language in the shipping articles which

were required by Sections 4511, 4512 and 4612 of the Revised Statutes (46, U. S. Code, Sections 564, 565 and 713). The statutes provide in general what the terms of the articles shall be. They are required to be executed under the supervision of a United States Shipping Commissioner (Sections 4508 and 4512 of the Revised Statutes). The form of the articles is provided by the Commissioner and prepared by the Department of Commerce, Bureau of Marine Inspection and Navigation, Shipping Service. The language to be construed is a phrase in a printed portion of the form, reading as follows:

> "and back to a final port of discharge in the United States."

The articles were marked in evidence at the trial as Defendant's Exhibit A, and also Plaintiff's Exhibit No. 1 (R. 10, 34, 35, 48). This exhibit has been submitted to this Court. For the convenience of the Justices a blank form is appended to this petition.

The Action in the State Courts.

The pleadings in the Municipal Court were in the short form authorized by the Municipal Court Code (R. 4, 5). Accordingly they do not fully reflect the actual issues. However respondent's proof established *prima facie* a right of recovery pursuant to Section 4527. Other proof showed that petitioner fulfilled the requirements of Section 4582 and showed that respondents were brought "back to a final port of discharge in the United States."

At the end of the trial a motion was made on behalf of petitioner to dismiss the complaint (1) on the ground that petitioner fulfilled the terms of the contract (R. 72, 73, 74) and (2) on the ground that the application of Section 4527

was excluded by Section 4582, with which petitioner had complied (R. 74, 75, 76, 72).

On April 26th, 1940 the trial court rendered its decision without opinion (R. 7). Judgment was entered thereon on May 3rd, 1940 (R. 6). In granting judgment for the respondents the court necessarily held that Section 4527 was applicable and thereby decided against petitioner's contention that Section 4582 was exclusively applicable in the circumstances. Necessarily the court also ruled that petitioner had not fulfilled the terms of the contract. The judgment of the Municipal Court has been affirmed on appeal by both the Appellate Term (R. 91) and Appellate Division (R. 99) of the Supreme Court of the State of New York. No opinion was written in any of the State Courts.

Accordingly the state courts have decided two federal questions of substance not heretofore determined by this Court.

The question of the interpretation of Sections 4527 and 4582 is substantial because it will affect not only the rights of the respondents but about thirty former members of the same crew and many other seamen and shipowners similarly situated. It will be demonstrated hereafter that Section 4527 should not have been applied in the circumstances presented here.

The question of the proper interpretation of the language of the articles is substantial because the form provided by the government must be used on all foreign voyages and the exigencies of the trade and world conditions frequently prevent the return of a vessel to ports of the United States in which event it is important to seamen and shipowners alike to know whether a shipowner fulfills its duty to seamen by returning them overland or by some other means to a proper port in the United States even though they are not returned on the vessel.

The Questions Presented.

1. In addition to complying with Section 4582 of the Revised Statutes is a shipowner obligated to pay each member of the crew one month's extra wages pursuant to Section 4527 of the Revised Statutes, if a vessel is sold at a foreign port before the seamen have earned one month's wages?

2. If, after the sale of a vessel in a foreign port, a shipowner returns the seamen by rail to the United States port at which they were engaged, paying their wages and subsistence to and including the day of arrival, is this not a fulfillment of the provision in shipping articles prepared by the Department of Commerce describing the termination of a voyage as "back to a final port of discharge in the United States", so as to preclude the application of Section 4527 of the Revised Statutes?

The Reasons for Granting the Writ.

1. The foregoing facts are not disputed.

2. The courts below have held that petitioner "improperly" discharged respondents within the meaning of Section 4527 of the Revised Statutes, although admittedly petitioner discharged them in compliance with the requirements of Section 4582 of the Revised Statutes.

The legislative history of these statutes demonstrates that Congress did not intend that Section 4527 apply in circumstances where Section 4582 specifically applied, as here.

Although this court considered and interpreted Section 4527 in *The Steel Trader,* 275 U. S. 388, the relation of this

statute to Section 4582 and the application of both to circumstances here presented has never been considered by this or any other court except those below.

3. This petitioner was confronted by a similar suit in the United States District Court for the District of Maryland when it sold a vessel at Halifax and, as here, returned the crew by rail to the port of their engagement. *Johnson* v. *Standard Oil Company of New Jersey,* 33 F. Supp. 982. In that case it was held properly that Section 4527 did not apply to coastwise voyages such as there involved. However, the seaman contended also that if Section 4527 did not apply, he was entitled to damages for breach of contract. The court overruled this contention, saying: "But I find no breach". In other words the court held that it was a fulfillment of the articles to return the seaman to a United States port even though the vessel was sold and did not return. The articles contained a provision regarding the termination of the voyage identical with the provision in the articles in this case.

Thus this petitioner has been subject to conflicting holdings in this and the *Johnson* case, *supra,* on identical facts. Unless this conflict is resolved shipowners will be subject to conflicting rules of liability depending on the selection by a seaman of a favorable forum.

This Court has pointed out the necessity for uniformity in maritime law and has held unconstitutional state statutes which impair such uniformity. *Southern Pacific Co.* v. *Jensen,* 244 U. S. 245. It is submitted that it is no less necessary that there be uniformity in the interpretation of maritime contracts prepared by the government and in universal use on foreign voyages, and in general, though optional, use on coastwise voyages. It is of importance to shipowner

and seamen alike. And the question is one never before presented to this Court.

WHEREFORE your petitioner respectfully prays that review by writ of certiorari be allowed.

Respectfully submitted,

STANDARD OIL COMPANY OF NEW JERSEY,

By VERNON S. JONES,
Attorney of Record.

WALTER P. HICKEY,
Of Counsel.

Dated, New York, February 13, 1942.

I hereby certify that I have examined the foregoing petition, and in my opinion it is well founded and entitled to the favorable consideration of the Court, and that it is not filed for the purpose of delay.

VERNON S. JONES.